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Marcia L. Glosenger, an Individual, as Sole Proprietor of Glosenger Electrical Services d/b/a Thomas Electric Company and International Brotherhood of Electrical Workers, Local 701, AFL-CIO. Case 13-CA-34561

March 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge filed by the Union on September 5, 1996, the General Counsel of the National Labor Relations Board issued a complaint on November 19, 1996, against Marcia L. Glosenger, an individual, as sole proprietor of Glosenger Electrical Services d/b/a Thomas Electric Company, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint,¹ the Respondent failed to file an answer.

On February 11, 1997, the General Counsel filed a Motion for Summary Judgment with the Board and on February 21, 1997, a supplement to the motion. On February 12, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 31, 1996, notified the Respondent that unless an answer

¹The General Counsel's motion, as supplemented, indicates the complaint was served by both certified and regular mail but that a copy of the complaint sent by certified mail on January 21, 1997, was returned as unclaimed and that the copy sent by regular mail has not been returned. The failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987). Furthermore, failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Therefore, we find that the Respondent was properly served with the complaint.

were received by January 10, 1997, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent has been owned by Marcia L. Glosenger, a sole proprietorship d/b/a Thomas Electric Company, with an office and place of business in West Chicago, Illinois, and has been engaged in residential electrical construction. During the 1995 calendar year, the Respondent, in conducting its business operations, purchased and received goods at its West Chicago, Illinois facility valued in excess of \$50,000 from other enterprises located within the State of Illinois, each of which other enterprises had received these goods directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About August 2, 1996, the Respondent interfered with its employees' union activities by instructing them not to wear clothing with union insignia on company jobsites and threatened its employees with termination because of their union activities.

About August 23, 1996, the Respondent discharged and has since failed to reinstate its employee Stephen N. Schuler because he assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By discharging and failing to reinstate its employee Stephen N. Schuler, the Respondent has also been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging and failing to reinstate Stephen N. Schuler, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Marcia L. Glosenger, an individual, as sole proprietor of Glosenger Electrical Services d/b/a Thomas Electric Company, West Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Instructing employees not to wear clothing with union insignia on company jobsites or threatening them with termination because of their union activities.

(b) Discharging or failing to reinstate employees because they assist International Brotherhood of Electrical Workers, Local 701, AFL-CIO, or engage in concerted activities, or to discourage them from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this order, offer Stephen N. Schuler full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Stephen N. Schuler whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this order, remove from its files any and all references to the un-

lawful discharge, and within 3 days thereafter notify the discriminatee in writing that this has been done and that the unlawful discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in West Chicago, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 5, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 7, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT instruct our employees not to wear clothing with union insignia on company jobsites or threaten them with termination because of their union activities.

WE WILL NOT discharge or fail to reinstate our employees because they assist International Brotherhood of Electrical Workers, Local 701, AFL-CIO, or engage in concerted activities, or to discourage them from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this order, offer Stephen N. Schuler full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Stephen N. Schuler whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this order, remove from our files any and all references to the unlawful discharge, and within 3 days thereafter notify the discriminatee in writing that this has been done and that the unlawful discharge will not be used against him in any way.

MARCIA L. GLOSENGER, AN INDIVIDUAL,
AS SOLE PROPRIETOR OF
GLOSENGER ELECTRICAL SERVICES
D/B/A THOMAS ELECTRIC COMPANY

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT instruct our employees not to wear clothing with union insignia on company jobsites or threaten them with termination because of their union activities.

WE WILL NOT discharge or fail to reinstate our employees because they assist INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 701, AFL-CIO, or engage in concerted activities, or to discourage them from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this order, offer STEPHEN N. SCHULER full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make STEPHEN N. SCHULER whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this order, remove from our files any and all references to the unlawful discharge, and within 3 days thereafter notify the discriminatee in writing that this has been done and that the unlawful discharge will not be used against him in any way.

MARCIA L. GLOSENGER, an Individual, as Sole
Proprietor of GLOSENGER ELECTRICAL
SERVICES d/b/a THOMAS ELECTRIC
COMPANY

(Employer)

Dated _____ By _____
(Representative) (Title)

200 West Adams Street, Suite 800, Chicago, Illinois 60606-5208, Telephone 312-353-7589.